

PREPARED STATEMENT OF KELLYANNE CONWAY

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 Committee on the Judiciary's Constitution Subcommittee

"The Scope and Myths of *Roe v. Wade*"
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Thank you for inviting me to speak about the state of polling data on *Roe v. Wade* (410 U.S. 11 (1973)). Public opinion is a powerful force in a democracy and should be collected, scrutinized and presented with the utmost care. In recent years the "latest numbers" have gone from being a footnote of journalistic evidence to leading the headlines. In many ways, the gravity assigned to public opinion is fitting in a country whose democratic government is designed to represent the will of its people. When collected fairly and accurately, national polling data provide a snapshot of American impression, opinion and even expectation, grounded in the moment of its capture, and tempered by the circumstances attending that moment.

What Makes a Good Poll?

Good polling combines the science of sound methodology with the art of writing meaningful questions which are objectively drawn, easily understandable, and likely to lead to insightful interpretation. When a pollster follows proper methods, a telephone survey fielded over several nights of 800 to 1,200 randomly sampled Americans can accurately register the opinions of the nation. The sample must also be gathered so that it is representative of the population; otherwise the results are not able to be generalized to the larger group. A skilled methodologist is able to manage these steps to reduce the amount of error in the survey, which for a national sample should be around + 3%.

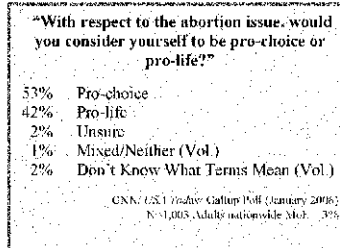
Questions must be carefully crafted so that the wording will mean the same thing to all participants and ordered from general to specific so that they do not bias the responses. Poorly worded instruments include double barreled questions that make it impossible to know which portion responses are directed towards. It is also important to balance positive and negative options so that opinions are not pushed in either direction. The pollster must be also careful to avoid asking questions that the respondent likely lacks the capacity to answer (e.g., "when do you think the Iraq war will end?") and using "feel good phraseology" to generate a particular answer (e.g., "do you oppose or support protecting the environment?").

Public opinion data on abortion represent a particularly interesting case study within my craft. Too often, results of bad polling questions are used to manufacture or shape public opinion rather than to measure or reflect it. The impact of the numbers on national conversations and deliberations on abortion rights and restrictions should not, and cannot, be ignored. Justices and legislators do not discount the public's attitudes on abortion when adjudicating and designing abortion laws.

For these reasons, I would like to present the major myths concerning polling on abortion and *Roe v. Wade*.

Myth: All Abortion Questions are Created Equal

Complex issues like abortion cannot be fully measured just on one dimension. It is irresponsible to simply ask “are you pro-life or pro-choice?” about an issue that includes religion, morality, science, medicine, politics, gender and law. All facets must be considered in order to reach a valid measure of opinion. Further, “choice” is a common word that represents a core American value that when presented alone, is difficult to disagree with for many Americans.



When we do ask that question, we compare it with an individual's answers on other aspects of the abortion debate, such as mandatory waiting period and notification of parents or spouses. We find that many Americans who label themselves as “pro-choice” also favor limiting the availability of abortions.

When given a “this-or-that,” “black-or-white” option the data lean more pro-choice. Support for the pro-life camp appears when specific types or instances surrounding abortions are given, typically introduced on a graduated scale. Insightful abortion questions reveal that while most people will support abortion in some cases, a much smaller number support unfettered access to the procedure.

For example, CNN/ USA Today/ Gallup routinely ask if abortion should be illegal or legal under any, most or only a few circumstances. This certainly is a better way to ask the question than a simple “thumbs up or down,” given the natural progress of a woman's pregnancy and maturity of a fetus over the nine months of pregnancy. That said, the choices presented do not help us deepen our understanding of what a respondent may

CNN/ USA Today/ Gallup Do you think abortions should be legal only under any circumstances, only under certain circumstances, or illegal in all circumstances? [If legal only under certain circumstances ask:] Do you think abortion should be legal in most circumstances or only in a few circumstances? November 2005. N=1,006 Adults nationwide. MoE: ±3%	26%	Legal Under Any Circumstances
	16%	Legal Under Most Circumstances
	39%	Legal Only in a Few Circumstances
	16%	Illegal in All Circumstances
	3%	No Opinion (Vol.)

have had in mind when she or he selected a particular position over the others.

For example, making a decision between “most” and “a few” circumstances may require the respondent to know factually what reasons women usually have abortions.¹ Even so, a plurality of adults (39%) believe that abortions should be legal only in “a few”

¹ No public available polling data has been collected on the public's knowledge and understanding of *Roe*.

circumstances. Respondents have no option but to hazard their best guess as to what each answer choice means. We have no idea how those “few” or “most” circumstances translate to the average American.

The Alan Guttmacher Institute which collects national abortion statistics reports that the top three reasons for terminating pregnancies are: 1) having a baby would interfere with work, school or other responsibilities; 2) they cannot afford a child; 3) they do not want to be a single parent or are having problems with their husband or partner. A superior polling question might present these facts about the circumstances that lead to most abortions before asking those respondents to opine “under which circumstances” they would allow abortions.

Another example of a less-than-stellar abortion question comes from a NBC/ *Wall Street Journal* poll. Here the abortion issue is framed according to a conventional sound-bite of the abortion rights movement, asking if “the choice on abortion should be left up to the woman and her doctor?” Remarkably, only 55% agreed with that seemingly powerful statement. Still, the combination of the use of “choice” and mentioning a doctor, which suggests that the abortion may be medically necessary, swings a greater percentage of the public towards abortion on demand. Further, only one middle-of-the-road choice is

<p><i>NBC/Wall Street Journal</i> “Which of the following best represents your views about abortion... The choice on abortion should be left up to the woman and her doctor; abortion should be legal only in cases in which pregnancy results from rape or incest or when the life of the woman is at risk; or abortion should be illegal in all circumstances.”</p> <p>May 2005, N= 1,005 Adults nationwide. MoE $\pm 3, 1\%$</p>	<p>55% Should Be Left up to a Woman and Her Doctor</p> <p>29% Legal Only in Cases of Rape/Incest/Risk to Woman's Life</p> <p>14% Illegal in All Circumstances</p> <p>2% Not Sure (Vol.)</p>
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offered: “legal only cases of rape/incest/risk to woman’s life.”

Some questions even go so far as to leave out reasonable answer categories. CBS News in January of this year asked adults nationwide about their personal feelings on abortion without offering “not permitted at all” as a choice. The other side of the equation, “life,” and more specifically, the life or rights of the fetus, is excluded from the question altogether. Even with such an egregious omission, 5% volunteered this position.

<p><i>CBS News</i> “What is your personal feeling about abortion? It should be permitted in all cases; It should be permitted, but subject to greater restrictions than it is now; It should be permitted only in cases such as rape, incest and to save the woman's life; It should only be permitted to save the woman's life.”</p> <p>January 2006 N= 1,151 Adults nationwide MoE MoF $\pm 3\%$</p>	<p>27% Permitted in All Cases</p> <p>15% Permitted But Greater Restrictions Than Now</p> <p>33% Permitted Only If Rape, Incest or to Save Woman's Life</p> <p>17% Only Permitted To Save the Woman's Life</p> <p>5% Not Permitted at All. (Vol.)</p> <p>3% Do Not Know (Vol.)</p>
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Accordingly, it seems fairer and more efficient to ask survey respondents about abortion by providing them multiple, graduated options and language from *Roe v. Wade* itself.² We have done this in our own work, and the results are telling.

In one such survey, the results to this question were: 16% believe that abortion should be “prohibited in all circumstances” and another 15% affirm that abortion should be legal only to save life of mother. Nearly one-quarter (24%) believes that abortion should be legal only in cases of rape, incest, or to save the life of the mother. Combined, more than half (55%) who favor stronger restrictions than are provided in *Roe v. Wade*. Twenty-one percent believe that abortions should be legal for any reason, but not after the first three months of pregnancy (using the Supreme Court’s language in *Roe v. Wade*). That leaves a remaining 7% who feel abortions should be legal for any reason, but not after the first six months of pregnancy and 9% who support legal abortions at any time, for any reason. In total, 16% of Americans decisively support the legal abortions of babies after the third month, or first trimester, of pregnancy.

<p><i>the polling company, inc.</i>TM/Lake Snell Perry Associates “Which of the following statements most closely reflects your position on the issue of abortion? Abortions should be prohibited in all circumstances; abortions should be legal only to save the life of the mother; abortions should be legal in cases of rape, incest or to save the life of the mother; abortions should be legal for any reason, but not after the first three months of pregnancy; abortions should be legal for any reason, but not after the first six months of pregnancy; abortions should be allowed at any time during a woman’s pregnancy and for any reason.”</p>	<p>16% Prohibited in All Circumstances</p> <p>15% Legal Only to Save Life of Mother</p> <p>24% Legal Only in Cases of Rape, Incest, or to Save Life of Mother</p> <p>21% Abortions Should be Legal for Any Reason, but not after the First Three Months of Pregnancy</p> <p>7% Abortions Should be Legal for Any Reason, but not after the First Six Months of Pregnancy</p> <p>9% Abortions Should be Allowed at Any Time, Any Reason</p> <p>9% Don’t Know/ Refused (Vol.)</p>
<p>March 2005, N= 800 Adults nationwide. MoE: ±3%. Split Sample</p>	

Americans consistently respond in a more “pro-life” manner when asked questions that provide graduated answer categories. In another poll conducted by **the polling company, inc.**TM/*WomanTrend*,³ (62%) of respondents chose one of the three pro-life positions in the survey, including prohibiting abortion under all circumstances (17%) or allowing it rare circumstances like saving the life of the mother (14%) or in cases of rape, incest, or to save the life of the mother (31%).

² Polling by **the polling company, inc.**TM/Lake Snell Perry Associates represents collaboration with Celinda Lake, who has been a pollster for the Democratic National Committee (DNC), the Democratic Governor’s Association (DGA), EMILY’s List, The White House Project and Planned Parenthood among many others. These data appear in the book co-authored by Mrs. Conway and Ms. Lake, *What Women Really Want: How American Women Are Quietly Fraying Political, Racial, Class and Religious Lines to Change the Way We Live* (Free Press, October 2005).

³ This poll was commissioned by the National Right to Life Committee and The Susan B. Anthony List.

In contrast, 35% of respondents aligned themselves with one of the three pro-choice positions in the survey, the bulk of which would allow first-trimester abortions only (21%). An additional 4% would permit second trimester procedures. Notably, only 10% of Americans agree with abortion on demand, saying they support abortion for any reason at any time during a woman's pregnancy. This number has declined sharply over the 33 years since *Roe v. Wade*, and certainly within the past 10 years since partial-birth abortion was introduced to the American consciousness.

<p><i>the polling company, inc.</i>TM - Which of the following statements most closely reflects your position on the issue of abortion? Abortions should never be legal; abortions should be legal only when the life of the mother is in danger; abortions should be legal only when the life of the mother is in danger or in cases of rape or incest; abortions should be legal for any reason during the first three months; abortions should be legal for any reason during the first three months, but not after the first six months of pregnancy; abortions should be legal for any reason at any time during a woman's pregnancy." (RESPONSES ARE ROTATED RANDOMLY)</p> <p>April 2005. N= 1,000 Adults nationwide, MoE +3%</p>	<p>17% Abortion Should Never Be Legal</p> <p>14% Legal Only When Mother's Life in Danger</p> <p>31% Legal Only in Cases of Rape, Incest, or Mother's Life in Danger</p> <p>21% Abortions Should be Legal for Any Reason During First 3 Months</p> <p>4% Abortions Should be Legal for Any Reason During First 6 Months</p> <p>10% Abortions Should be Legal at Any Time, Any Reason</p> <p>3% Unsure/ Don't Know/ Refused (Vol.)</p>
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Another myth about *Roe v. Wade* that is discredited through the polling data is that abortion is "a woman's issue" and as such, is favored much more by women than men. This stereotype is played out by candidates of both major political parties many times during the average election cycle, especially when a male candidate attempts to "reach out to women."

Yet, an examination of the cross-tabs from the aforementioned question reveals that women and young adults do not hold considerably more radical positions on abortion than the rest of the population. In fact, women were 4 points more likely than men to believe that "abortion should never be legal" (19%- 15%, respectively), while men were 4 points more likely than women to agree that "abortion should be legal for any reason at any time during a woman's pregnancy" (12%- 8%, respectively).

Age variations were also evident in respondents' positions regarding abortion. Groups aged 45-54 years old and 65+ were more likely than all other age groups to support prohibiting abortion under all circumstances. Young adults aged 18-24 were more likely than most to believe that "abortion should be legal only when the life of the mother is in danger or in cases of rape or incest" (36%- 31%). Respondents between the ages of 35-44 were 4 points more likely than the average respondent to be "pro-abortion" (39%- 35%) using the six-point scale.

It is also important to remember that while abortion is an important issue to many Americans, it is not the only issue of concern. When asked which issue was most

important in deciding how to cast a ballot in 2004, many other concerns trumped abortion in importance. The economy (14%), the War in Iraq (14%), Social Security and Medicare (10%) topped the list; abortion was the top voting priority for only 3% of adults.⁴

Myth: The Majority of the American Public Supports *Roe v. Wade*

The recent confirmations of Supreme Court Chief Justice John Roberts and Justice Samuel Alito have brought a considerable amount of attention to the 1973 *Roe v. Wade* decision. During the Judge Alito hearings, the soon-to-be Justice fielded at least 101 questions on abortion. That is nearly two-in-ten of the total (18%), and outnumbers the amount queries on any other topic.

"Would you like to see the Supreme Court make it harder to get an abortion than it is now, make it easier to get an abortion than it is now, or leave the ability to get an abortion the same as it is now?"

42% HARDER
45% SAME
11% EASIER
2% NO OPINION (Vol.)

ABC/ *Washington Post* (December 2005)
N=1,001 Adults nationwide MoE ± 3%

The American public, in contrast, seemed less concerned about Judge Alito's position on abortion than the Senators holding the hearings and the press covering them. When asked: "How important is it to you that Alito agrees with your position on abortion?" in an ABC News/ *Washington Post* poll, a majority (53%) felt that it was of low importance.

In the same poll, Americans were asked if they would like to see the Supreme Court make it harder or easier to get an abortion than it is now, or keep availability the same. Only 11% favored relaxing abortion rules, while almost even percentages wanted the laws to be *more* restrictive (42%) or stay the same (45%).

Recent polling has reported that robust numbers of Americans agree with upholding *Roe*. In fact, as measured by a CNN/ *USA Today*/Gallup Poll, more adults were behind the ruling in early 2006 than in late 2005, potentially because of the emphasis on abortion in the John Roberts and Samuel Alito confirmations. However, their question is another example of irresponsible polling: "Turning to abortion: Would you like to see the Supreme Court overturn its 1973 *Roe versus Wade* decision concerning

Turning to abortion: Would you like to see the Supreme Court overturn its 1973 <i>Roe versus Wade</i> decision concerning abortion?			
	Yes, Overturn	No, Do Not Overturn	Unsure
January			
October 2005	28%	63%	9%

⁴ The polling company: Inc. 19/ Lake Snell Perry Associates (March 2005) N= 800 adults nationwide, MoE ± 3% Published in *What Women Really Want: How American Women Are Quietly Erasing Political, Racial, Class and Religious Lines to Change the Way We Live* (Free Press, October 2005).

⁵ CNN/ *USA Today*/ Gallup Poll. N=1,006 Adults nationwide MoE ±3%.

abortion, or not?" No context is given, the public is supposed to know exactly what *Roe v. Wade* is along with the consequences of overturning it.

Unfortunately, omissions like those are the norm and when extra information is supplied it is often leading or incomplete. Some call *Roe v. Wade* a "landmark decision," or say it "legalized abortion," or "established a constitutional right for women to obtain legal abortions in this country" without specifying the restrictions provided in the ruling. Questions never give a complete understanding of the case or include language which would explain its ruling: states were not allowed to ban abortion during the first trimester, while regulations on abortion were legal in the last six months of pregnancy.

The Supreme Court legalized abortion 32 years ago in the ruling known as <i>Roe vs. Wade</i> . If that case came before the court again, would you want Alito to vote to uphold <i>Roe vs. Wade</i> , or vote to overturn it? Same question asked in early November 2005.		
12/05	11/05	
61%	64%	UPHOLD
35%	31%	OVERTURN
4%	5%	NO OPINION
ABC News/Washington Post, December 2005 N=1,008 Adults nationwide. MoE: ±3%		

In December 2005, ABC News/ Washington Post also asked the American public how they would want Alito to vote on the issue of abortion. Here, the question language suggests that overturning *Roe v. Wade* would outlaw abortion completely. Just over six-in-ten wanted Justice Alito to cast a ballot for upholding *Roe v. Wade* although that number decreased within the margin of error (61% v. 64%) in a month's time. Measured in this manner, a majority of conservatives, Evangelicals and weekly churchgoers would support an Alito vote against the case. Registered Democrats and Independents and self-identified liberals and moderates, along with those who do not practice religion, non-Evangelical Protestants and those who rarely attend church were more likely than most to want Alito to uphold the controversial ruling.

	Uphold	Overturn
All (December 2005)	61%	35%
Women	64%	33%
Men	58%	37%
Democrats	70%	27%
Independents	69%	29%
Republicans	47%	47%
Liberals	73%	25%
Moderates	72%	26%
Conservatives	44%	50%
No religion	86%	12%
Catholic	59%	37%
Evangelical Protestant	42%	53%
Non-Evangelical Protestant	75%	22%
Weekly churchgoer	41%	54%
Monthly churchgoer	61%	36%
Less often/ never	78%	19%

However, there is a clear disjunction between the numbers of voters who support the specific provisions of the ruling and those who say they would like to see *Roe v. Wade* upheld. In 1973, Justice Blackmun concluded that abortion should be available in the first three months of pregnancy and that the states should be given the ability to regulate abortion in the final trimesters with respect to concerns about the woman's health. When asked if abortion should be legal in terms of months like *Roe v. Wade* does, a combined

55% of Americans prefer at least some regulation of abortion in the first three months of pregnancy.⁶ It is imperative that polling questions go beyond the simple categorizations of “for or against.” Without clarification, many individuals may believe that overturning the 32-year-old ruling will outlaw abortion entirely.

Furthermore, *Roe v. Wade* specifically outlines broad provisions for exemptions well beyond rape, incest and saving the mother’s life, including claims of emotional, psychological and social health as well as the considerations of a woman’s age and station in life. In essence the ruling has left open the door for states to allow late-term abortions for almost any reason, despite the fact that majorities of voters in states where this question has been tested have echoed the sentiments of nationwide samples in calling for the outlawing of these late-term abortions altogether.

These sweeping allowances fly in the face of the vast majority of public opinion. In 2003, CNN/ *USA Today*/ Gallup Poll⁷ found that 68% of adults think that abortion should be illegal “in the second three months of pregnancy” and that number rises to an eye-popping 84% “in the last three months of pregnancy.” Let me stress how unusual it is for eight-in-ten Americans to agree on anything.

The American public is also clearly against abortions for economic reasons, as 61% say it should be *illegal* “when the woman or family cannot afford to raise the child.” Clearly, a careful interpretation of polling data demonstrates that fewer people support the tenets of *Roe v. Wade* than is suggested by an up or down, pro-life or pro-choice question.

Concluding Thoughts

The methodology and phraseology of public opinion polling on abortion should be as carefully considered as the results. In cases where the American public is given a fair chance to voice their opinions on the complex considerations associated with this issue, it is evident that most Americans do not support abortion on demand and the broad provisions outlined in *Roe v. Wade*. And it is unclear whether people even understand what *Roe* itself provides.

The need for responsible polling is amplified when, as here, the issue at hand is both complicated and changeable. Different things take place over the course of a pregnancy, and, thanks to the Internet and sonograms, most Americans are aware of that. If the underlying issue is not static, perhaps the public’s view of it is also non-static. This dynamism and openness should be present in any questions that deign to test the public’s impressions, opinions or expectations about it, particularly as those data shape public discourse and inform legislative action. Thank you.

⁶ the polling company, inc./ Wake Snell Perry Associates (March 2005) N= 800 adults nationwide, MoE \pm 3% Split Sample. Published in *What Women Really Want: How American Women Are Quietly Fraying Political, Racial, Class and Religious Lines to Change the Way We Live* (Free Press, October 2005).

⁷ January 2003. N= 1,002 adults nationwide, MoE \pm 3%.

Mr. CHABOT. Thank you.

The gentleman from Arizona is recognized for 5 minutes.

Mr. FRANKS. Well, Thank you, Mr. Chairman. And thank all of you again for coming.

My first question is directed toward Ms. Roy. Ms. Roy, you know, I saw something happen here a little while ago, that one of my colleagues to my left on the other side of the aisle here said something along the lines that, you know, that the real question is, you, is this a person? And indeed for one of the rare moments I completely agreed with him, that that is indeed the real question before us. I know as you deal with women that go through these situations and post-abortive circumstances, it occurs to me that if they indeed have some difficulty, that they have made that decision in their own mind that this was a person. And I guess my first question to you is, what do you think, given your testimony that abortion has hurt women, why do you think that that's true?

Ms. ROY. There's a universal law that no matter what position a woman takes regarding the beginning of life, that the end result of a pregnancy is a baby. Pregnancy equals baby. This is simple irrefutable fact. So the myth that it's tissue causes a cognitive snap for women as they try to disconnect this truth. And so I don't get hung up in where it starts, but I see the women who have tried for years—the oldest woman I've worked with was 76 and the youngest was 14. I've worked with women who have aborted single, multiple, triplets, medical, partial birth, all of it. They come to me because they are recognizing that there's been a severe loss and they cannot keep that apart. It's called "baby on the brain." They have that imprint on them.

Regardless of how long a pregnancy lasts, that woman was a mother. Regardless of why the pregnancy ended, that woman was a mother. And that universal truth causes this snap that women have to deal with, and that's why regular secular counseling, many professional counselors, many Christian counselors, do not understand because they don't always draw the connect. We try to be too politically correct and don't recognize that pregnancy would equal a baby at the end, regardless of the politics at the beginning of it, and that's when I see the women who cannot make that connect, what they choose to do versus what this meant to them, and so they move to the huge symptomology list that I've noted.

Mr. FRANKS. Thank you, Ms. Roy.

Let me, Professor Alvaré, try to retrofit that question in the legal sense now. You know the Constitution of the United States says no person shall be deprived of life, liberty or property without due process of law. That's the absolute—if we could say our entire Constitution in one sentence, that would be it. And I'm asking you—you know, the real struggle today in this panel, in this country, is deciding whether this unborn entity is person or property, because after all, it occurs to me that everything in law deals with either person or property.

I guess my question to you, related to this struggle here, is as has been mentioned earlier, the state of the law, where does the law, given *Roe v. Wade* and *Doe v. Bolton*, and all the things that follow there, what does that say about this personhood of the unborn child, or is it just property? What is the actual state of the

law today based on those—because I see it in your testimony—just give us a little perspective.

Ms. ALVARÉ. Thank you, yes. First of all, it's important to note that when the Court, in *Roe v. Wade*, went on its search for the meaning of "person" in the Constitution, the way it conducted it was to look at the use of the word "person" in contexts that clearly could not have spoken to abortion, who can be a Senator, who can be a Member of the House of Representatives. There's no wisdom on the abortion issue in those sections of the Constitution, and both self-described pro-choice and pro-life legal experts agree it was a ridiculous search.

But they did it anyway, and found that the child is not a person, so enjoys, unborn, no protection whatsoever, under the protection for life and liberty and so forth of the Due Process Clause.

What they did and where we are today after *Roe* and *Casey* and *Stenberg*, is really a situation where, especially because of that loosely defined health exception, health including—and I'm quoting from *Doe v. Bolton*—"all factors physical, psychological, emotional, familial or the well-being of the woman." Because it can include potentially anything, and a State must step back and allow abortion to take place when a doctor says anything of that is involved, there is really no restriction on an abortion for any reason at any time.

Oh, there are regulations, informed consent, judicial bypass for a minor, but no restriction at all.

Mr. FRANKS. Mr. Chairman, could I request two more minutes?

Mr. CHABOT. The gentleman's time is expired. The gentleman is granted two additional minutes.

Mr. FRANKS. Thank you, Mr. Chairman.

Just to follow that, Professor Alvaré, the right to privacy is often cited here, and I, for one, believe as you do, that there are even some enumerated clarity in the Constitution that includes certain rights to privacy. I, obviously, don't believe that includes taking another person's life.

But having said that, if it did, a right to privacy that would include taking a child's life, just from a constitutional standpoint, what action wouldn't that right to privacy then allow?

Ms. ALVARÉ. That's really the difficulty, because it has no self limit, and that could not be better expressed than in Sandra O'Connor's explication of the right of liberty, the right of privacy, in the *Casey* decision, to include one's own opinions about things including the shape of the universe. It becomes completely subjective. That absence of a definition there is one of its greatest threats.

Mr. FRANKS. I think that even the pro-abortion perspective often-times struggles with this person or property, whether this is actually a life, or if it is just a piece of property. In fact, you know, Judith Arcana said sometimes a woman has to decide to kill her baby. That's what abortion is. That's a pro-choice author and educator. Faye Wattleton, former President of Planned Parenthood, said, "I think we have deluded ourselves in to believing that people don't know that abortion is killing, so any pretense that abortion is not killing is a signal of our ambivalence, a signal that we cannot say yes, it kills a fetus, but that's the woman's body and ultimately her choice."

And I think that's the reason we struggle so much, Professor Alvaré, is that somehow in our own hearts in this country, we know that this is a person. We know that taking a life, that the mother taking the life of that person has a great impact on her. And I'm out of time.

Mr. CHABOT. Thank you very much.

Did you want to respond, Professor?

Ms. ALVARÉ. No, thank you, sir.

Mr. CHABOT. Thank you very much.

I believe the gentleman from New York would like an additional 2 minutes?

Mr. NADLER. Yes. Thank you.

I have two comments. I wouldn't have sought the time except for the fact that Ms. Conway came in after you questioning. First of all, let me be very clear. The question of abortion is when does something become a human life? A clump of cells, as far as I'm concerned, is property. It is not a human life, and that is why an abortion is fine.

Mr. FRANKS. Would the gentleman yield?

Mr. NADLER. No, I will not yield.

Now, at some point it becomes a human life. When is a good question. I can't answer it. But a clump of cells is not a human life. That's why stem cell research is fine. That's why in vitro fertilization is fine, and that's why abortion is fine up until the point where it becomes a life and then becomes a human being, and I don't know where I would draw that line, but sometime certainly before 8 or 9 months of pregnancy.

Secondly, I just want to talk about Ms. Conway's testimony. Most of it I agree with in terms of polling methodology. Having said that, I find two things interesting. One, that in all your questions you don't ask about the health of the mother, which is a key question that ought to be in there. And secondly, I find the entire question of polling and your entire testimony irrelevant, because polling has nothing to do with what a person's constitutional rights should be. A person has the right of liberty. You can debate how to define that. A person has constitutional rights.

But as the statement from Justice Jackson in the *Barnett* case in 1942 or '43 that I read in my opening statement, put it: "Our rights to liberty, our right to freedom of speech, freedom of religion, *et cetera*, are not up to anybody's vote, not up to anybody's religion, not the basis of anybody's political opinion, not subject to the outcome of any election, and constitutional rights should not be the question of polling."

Your polling data is very interesting in terms of how we should fight political campaigns, *et cetera*, but is not relevant to whether *Roe v. Wade* is rightly or wrongly decided.

Thank you.

Mr. CHABOT. Thank you. The gentleman's time is expired.

Ms. CONWAY. May I?

Mr. CHABOT. Would the gentlelady like to respond? You are a gentlelady even though you're not one of—

Ms. CONWAY. Thank you, Mr. Chairman.

Congressman Nadler, today is not the first time I heard a politician even today say that they don't like polls, but—

Mr. NADLER. Oh, I love polls.

Ms. CONWAY. Thankfully, as long as there are weathermen, pollsters will have a job for sure. I'm a fully recovered attorney and don't want to go back that way, so please don't decimate my industry that badly.

I will say this. Polling always has a role in public policy making, wherein it allows us some type of touchstone to public opinion, but also—and in the case of *Roe v. Wade*, very critically so—public impression, public guesstimation, public optimism, public misinformation, public ignorance, as it were. And I would submit, with all due respect to the Committee, that polling helped to fuel something that is the law of the land right now very recently, called campaign finance reform, because it was 75, 80 percent in the polls, 55 percent strongly so, and that was—but, Congressman Nadler, that was passed by, at the time, a Republican-controlled House, a Democratically-controlled Senate, and signed into law by a Republican President, this President. And the Supreme Court itself referred to polling the public's will on campaign finance reform—

Mr. NADLER. Would the gentlelady yield for a second?

Ms. CONWAY. Sure.

Mr. NADLER. I have to say this. First of all, I did not denigrate the great art and science and profession of polling.

Ms. CONWAY. Thank you, sir.

Mr. NADLER. In fact, I said I agree with most of your comments and methodology. It's wonderful. I also think it's perfectly appropriate to look at in terms of public opinion, in terms of how we may want to vote as Members of Congress, as a political branch of Government.

Where I said it was irrelevant is in terms of constitutional rights and court decisions. The *Brown v. Board of Education* may very well have been an unpopular decision at the time it was made. That's not to say it is right or wrong. Obviously, I think it was right. *Roe v. Wade* may be right or wrong. I think it was right. Some other people think it was wrong. Whether it's popular or not has no bearing on whether it's correct from a constitutional point of view. Whether we should do something about it, whether we should pass a constitutional amendment for that, the polling is legitimate, *et cetera*, because that's the will of the people. But what I said was when we're talking about whether *Roe v. Wade* was rightly or wrongly decided, polling should have no bearing on that, because public opinion should have no bearing on that.

How we should respond to such a decision, through a constitutional amendment or otherwise, that's legitimate for polling and public opinion to have its perfectly legitimate role. That was the only thing I was trying to say.

Ms. CONWAY. Thank you, sir. Just one last brief comment. I have seen polling data—I don't have it here in front of me—people being asked, when do you think life begins? And the struggle that even members of the panel seem to have with that question is very common to most Americans.

And I don't have the data in front of me, but I do recall that the answer to the question, when does life begin, was not the majority saying sometimes after an 8-pounder is existing his or her mother's body. People feel that it begins—that the cluster of cells, as the

Congressman from New York has termed them, develops into a fetus, and what the Court in *Roe*, 33 years ago, referred to as a child, some time much sooner than the 8th or 9th month, and at point in the pregnancy at which abortions are allowed in certain States.

Mr. CHABOT. Thank you. The Chair will yield himself 2 minutes, and then we'll be finished. I'll go to you, Ms. Conway, since I didn't have a chance to question you.

I think the relevance of the polling to this issue is that I believe it's unclear, according to your testimony, whether people even understand what *Roe* itself provides. They may think that it provides some things but it goes far beyond what most people think it really means.

And to summarize your testimony, I believe, polling data establishes that the majority of Americans do not support abortion on demand, but rather support greater restrictions on abortion than are currently allowed under *Roe* and its progeny; is that correct, and would you comment on that?

Ms. CONWAY. That is correct, Mr. Chairman, and information correct, when said restrictions are questioned in surveys in and of themselves, they usually receive a majority support. Examples: the interstate transportation of a 15-year-old girl across State lines, say from Pennsylvania to New York, with her 45-year-old boyfriend to achieve an abortion, which may by that time be illegal in Pennsylvania, without the notification, let alone consent of her parents. A very striking majority of Americans believe that that is a good idea to restrict abortion on demand according to that situation. And, of course, our law already recognizes that a 15-year-old cannot go to an R-rated movie, cannot get her ears pierced, cannot drive, vote, without her parents' permission, in most States, can't get married without her parents' permission. So people just draw upon their own reasonable common sense.

Restrictions, on late-term abortions, restriction on second trimester or after the first 3 months of a woman's pregnancy are certainly heralded by the masses, along with other restrictions for sex selection, for example. And, of course, I already talked about the data—

Mr. CHABOT. Which is currently legal under current law, that one could have an abortion because they don't want a girl or they don't want a boy.

Ms. CONWAY. It is not specifically prohibited, therefore, it is permissible, certainly in some States, and *Roe* leaves that open.

Again, 61 percent said that they are opposed, in a media-sponsored poll, opposed to abortion, and said it, quote, "should be illegal," used that word illegal, quote, "when the woman or family cannot afford to raise the child." So this elitist, somewhat racist sound bite that many have used to try to keep *Roe* alive and kicking, all puns intended, is soundly rejected by a majority of the American people.

I also think something needs to be made, public opinion wise, of the scare tactic about resorting to the back alleys, resorting to the back alleys. If you listen, particularly to young people long enough in focus groups, which are not scientific and are not projection—and were not part of my testimony for that reason—but if you lis-

ten to them long enough, they do not believe that the back alley is somewhere where a medical procedure is going to take place in this country. They can walk into a Starbucks Coffee Shop on almost any corner in almost any State, every State in this country, in any airport, and get latte done 18,000 ways. They can e-mail a friend in India and get a response within a minute. And in that minute, while they're waiting for a response, research travel and stocks and weather and everything else they want to know, health information, educational information, on the Internet, and then get a response from a friend in India within a minute.

They don't believe that in the same culture that allows them to do all of this, that there is going to be a back alley kind of medical procedure. And so those scare tactics and the out-of-sight out-of-mind mentality that really fueled the *Roe* proponents for many years, I would say has been discredited mainly by medical and scientific developments. Most people in this country tell pollsters they have seen sonograms. Most people in this country understand that at some point a pregnancy results in a child, or would have had it not been artificially interrupted, and that most people understand that if a fetus is left to develop on itself, it will development into what the *Roe* Court correctly said was a child.

In essence, ladies and gentlemen, the fetus beat us.

Mr. CHABOT. Thank you very much. I want to thank all the witnesses for their testimony this afternoon. I thought this was really excellent testimony from all involved. So thank you very much.

If there is no further business to come before the Committee, we're adjourned. Thank you.

[Whereupon, at 3:47 p.m., the Subcommittee was adjourned.]